PROPOSED

for the

NORTHWEST TERRITORIES

CONSERVATION PAPER

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HUMAN RIGHTS CODE

for the

NORTHWEST TERRITORIES

CONSULTATION PAPER

Department of Justice and Public Services
Government of the Northwest Territories
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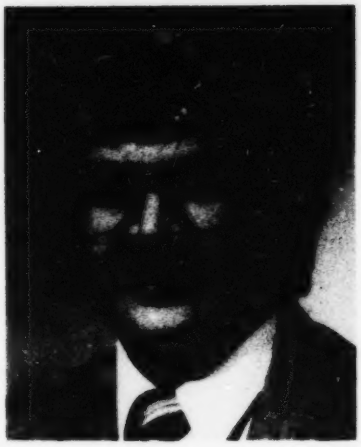


MINISTER'S STATEMENT

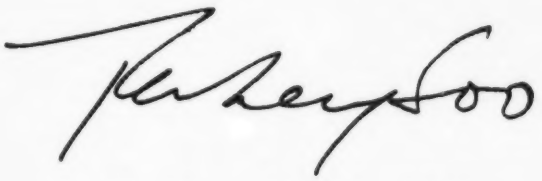
The beginning of this decade has seen the rapid development of the law regarding human rights in our country and around the world. In Canada, the inclusion of the *Charter of Rights and Freedoms* in the Constitution has been a landmark event, and is the most visible aspect of the growing concern all people feel for the protection of their rights in society. Here in the North we stand at the crossroads of our political and social development and, as each day passes, people are coming to understand that one of the most important duties of modern responsible government is the protection and enhancement of human rights. Yet, at the moment we do not have a comprehensive statute in the Northwest Territories to set forth these rights and enforce them for the benefit of each individual. Currently, the law is composed of an out-of-date Ordinance and a federal statute administered from outside the Northwest Territories. Therefore, in order to correct this deficiency and carry out the duty of a mature government, I am presenting on behalf of this government a draft *Human Rights Code* to the people of the Northwest Territories.

The purpose of this *Code* is to firmly establish the rights of each person in the Northwest Territories and to establish a process outside the courts for enforcing and protecting those rights. It is, however, not intended to affect aboriginal rights in the Territories. I believe that it is vital in a diverse and multicultural jurisdiction like ours that there be a *Human Rights Code* to protect the right of all special groups — whether they be special because of their race, religion, sex or handicap — to participate in the many aspects of our Northern Society.

This is a crucial time for everyone to recognize the importance of human rights in the Northwest Territories and to cooperate in the creation of a *Code* that will reflect our ideals. This paper has been prepared for the purpose of soliciting comment and I invite everyone to read it and to debate its substance so that we may truly have a *Code* written for the

North. It is my sincere hope that we will enact a *Code* that is founded upon respect for moral and spiritual values and the dignity and worth of the human person.

This draft *Code* has been developed through cooperation between this government and the Government of Canada. I gratefully acknowledge the generous assistance of the federal Department of Justice and the Human Rights Research and Education Centre in Ottawa.



The Honourable Richard Nerysoo
Government Leader and Minister of Justice and Public Services

TABLE OF CONTENTS

Introduction 1

Summary of The Draft Code 3

Proposed Human Rights Code for the Northwest Territories 13
(including Table of Contents)

INTRODUCTION

Everyone in the Northwest Territories will agree that there are basic human rights to which each person is entitled. Many of these rights are taken for granted because they are so fundamental to our way of life but to what source can people look when seeking to enforce or protect their rights? At the moment they must rely on two statutes, the *Fair Practices Ordinance* and the *Canadian Human Rights Act* as the principal sources of law on human rights in the Northwest Territories.

It is the purpose of the draft *Human Rights Code for the Northwest Territories* (the *"Code"*) to consolidate the law on human rights into one statute in order to establish a comprehensive source of law. The Federal Government has amended the *Canadian Human Rights Act* to restrict that Act to federal employees and federal services and to allow the Legislative Assembly to enact similar legislation. It is therefore now possible to enact a *Human Rights Code* for the Northwest Territories written for the people of the Territories. For this reason the Minister of Justice and Public Services is actively seeking your help in shaping the *Code.*

The *Code* will not only establish the rights to which people in the Territories will be entitled but also the means by which they may enforce and protect their rights. Every attempt has been made to make it a comprehensive statute. In this respect it goes beyond the *Charter of Rights and Freedoms* (the *"Charter"*) which is part of the Constitution of Canada. The *Charter* guarantees many of the same rights as will be enshrined in the *Code* but does not provide a means for enforcing those rights other than through the ordinary court process. In the *Code,* however, there will be a Human Rights Commission responsible for protecting the rights given under the *Code.* That Commission will be situated in the Territories to reflect the concerns of the North.

The balance of this document is divided into two parts. The first is a section by section summary of a draft *Human Rights Code.* It is followed by the draft *Code* which, while not being an Ordinance, is intended to express in fairly precise language all the provisions that the Minister of Justice and Public Services and his Department believe should be in the *Code.* The summary has been written in an informal style so that the reader may have a detailed but condensed version of the *Code.* Please read them thoughtfully and consider the provisions of the draft *Code.* If you wish to make any comment on them or contribute an opinion please write to:

The Honourable Richard Nerysoo,
Minister,
Department of Justice and Public Services.

SUMMARY OF THE DRAFT CODE

The following is a summary of the draft *Human Rights Code for the Northwest Territories:*

Preamble

The preamble sets out the principles upon which the legislation is based. It could be used by the court in interpreting the provisions of the *Code.* It is specifically stated in the preamble as well as in the *Code* that the *Code* does not affect aboriginal rights as determined under the Constitution of Canada.

PART 1 – TITLE AND PURPOSE
Section 1

The Ordinance, when enacted, would be referred to as the *Human Rights Code for the Northwest Territories.*

Section 2

This section states what the *Code* hopes to accomplish. The main goals are that every person will have equal opportunities in life and that unfair discrimination will be discouraged and remedied. Ultimately the goal is that people can act and will be treated solely on the basis of their personal merit.

PART 2 – RIGHTS ON ARREST OR DETENTION
Section 3

This provision is similar to sections 10 and 11 of the *Charter.* It provides that everyone has the following rights: the right to freedom from arbitrary arrest or detention; the right to know the reasons for the detention; the right to notice of any charges that might be laid; the right to retain and instruct a lawyer without undue delay; and the right to a prompt judicial determination of the legality of the detention.

PART 3 – FREEDOM FROM DISCRIMINATION
Section 4

The main areas where discrimination will not be permitted, will be in employment, accommodation, contracts, services, goods and facilities. Other areas where discrimination will not be permitted are described elsewhere in the *Code.*

Section 5

The prohibited grounds of discrimination are: race, origin, religion, language, sex, age, family status, handicap, source of income or livelihood, political or other opinion, and offence record. Acts which constitute discrimination are described and include unintentional discrimination as well as intentional discrimination. Discrimination can, however, be permitted where it is reasonable and *bone fide* in the circumstances or where the discrimination is an approved part of a special program under the *Code.*

Section 6

Complaints of discrimination may be made to the Northwest Territories Human Rights Commission. The Commission may attempt to work out a settlement acceptable to all parties, but if this is not possible, it will arrange for a hearing by a Human Rights Tribunal.

Section 7

No person shall discriminate in the provision of any service, facility, goods, accommodation, rights, licence or privilege available or accessible to the public or a section of the public. Minimum age legislation and special schools which only allow persons of the same sex or religion or persons with a particular handicap to attend will be allowed.

Section 8

No person shall discriminate with respect to commercial or residential accommodation. However, a person can refuse to provide residential accommodation where the building is restricted to either men or women or where the second unit of a two unit building is occupied by the owner's family or his agent's family.

Section 9

No person shall directly or indirectly refuse to employ or refuse to continue to employ any person on the basis of a prohibited ground of discrimination. This applies to occupational organizations such as trade unions and professional organizations and to volunteer agencies which carry out public functions such as a fire department.

Discrimination may be allowed if it forms part of a special program approved under the *Code*, for example: an affirmative action program to hire aboriginal peoples. Discrimination may also be permitted if it is based on a reasonable and *bona fide* requirement. This section does no apply to non-profit organizations in certain circumstances listed in subsection (10).

An employer may not pay different wages to a male than to a female or *vice versa* when they are employed in the same establishment or by the same employer and perform work of equal value. This is currently the law under the *Canadian Human Rights Act*. However, the difference in wages may be allowed if the difference is based on a factor declared by the Human Rights Commission to be a reasonable factor that justifies the difference. However, sex alone will not constitute a reasonable factor justifying the difference in wages.

Section 10

Discriminatory messages and signs will be prohibited.

Section 11

Written or verbal contracts which discriminate against any person will be prohibited. Any discriminatory term or condition in a contract will be deemed to be without effect. The *Code* permits exceptions to this provision and, in particular, makes an exception for settlements arising from aboriginal claims.

Section 12

A person will not be permitted to intimidate or discriminate against another person because that person has made a complaint or participated in the settlement of a complaint under the *Code*.

Section 13

Harrassment on the basis of any prohibited ground of discrimination is prohibited by this section.

Section 14

Discrimination against any person because of his or her actual or alleged associations with another person, identified by a prohibited ground of discrimination, is prohibited.

Section 15

This provision is similar to section 15 of the *Charter* and provides that all persons have the right to equality before and under the law and the right to equal protection and benefit of the law without discrimination. These rights are qualified by being subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. Exceptions are made for settlements arising from aboriginal claims and special programs under the *Code*.

Section 16

This section requires the *Code* to be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of the residents of the Northwest Territories.

Section 17

This section addresses pensions and insurance policies. A person is not entitled to complain about a provision in a pension or insurance fund or a plan existing at the commencement of this Ordinance.

Section 18

This section defines, for the purposes of the *Code*, many of the terms used in the *Code*.

PART 4 – NORTHWEST TERRITORIES HUMAN RIGHTS COMMISSION

Section 19

There will be a Human Rights Commission consisting of a Chief Human Rights Commissioner and between two and six members. They will be appointed by the Minister of Justice and Public Services. The members shall serve on a part time basis for terms not exceeding three years.

Section 20

The Commission will be generally responsible for the administration of the *Code* and will have responsibilities for human rights education and research and for maintaining close liaison with other human rights agencies. It shall attempt to discourage and reduce discrimination and encourage the development and improvement of arrangements for handicapped persons.

The Commission may issue interpretation guidelines with respect to any provision of the *Code.*

Section 21

This section deals with payment of remuneration and expenses for members of the Commission.

Section 22

The Chief Human Rights Commissioner will be the Chief Executive Officer of the Commission and will preside over meetings of the Commission.

Section 23

The officers and employees who are required for the proper conduct of the work of the Commission will be appointed.

Section 24

The Commission may enter into contracts with expert contractors for specific projects.

Section 25

The Commission shall appoint an Executive Director to carry out the administration of the *Code* and direct day-to-day activities of the Commission.

Section 26

Any person who receives information on behalf of the Commission will not be required to give evidence in any proceeding respecting that information or communication unless an exception is made under the *Code.*

Section 27

The head office of the Commission will be in Yellowknife. In addition, the Commission may establish such regional offices as it considers necessary to carry out its functions.

Section 28

The Chief Human Rights Commissioner will determine where the Commission will meet and may establish committees of the Commission to carry out many of the powers, duties and functions of the Commission.

Section 29

The Commission has the power to make by-laws for the conduct of its affairs.

PART 5 – COMPLAINTS OF DISCRIMINATION

Section 30

A person, who on reasonable grounds feels that someone is engaging in or has engaged in discrimination contrary to the *Code*, may make a complaint to the Commission. The Commission may also make a complaint.

A person making a complaint may be obligated to exhaust other grievance or review procedures that are reasonably available before the Commission deals with the complaint. The Commission is not required to deal with certain complaints including those which are trivial, frivolous, vexatious or made in bad faith.

Section 31

The Commission may join separate complaints if they deal substantially with the same issues of fact and law.

Section 32

A complaint may not be made against superannuation or pension plans if a participant in the plan would be deprived of any rights acquired under the plan as a result of the complaint.

Section 33

An investigation of complaints shall be made by a person authorized by the Commission. The investigator will have the power to enter the work premises of the person complained against, request a production of documents for inspection and examination and remove such documents for the purpose of making photocopies. The investigator may question people about the complaint. An investigator cannot enter a dwelling place without the consent of the occupier unless he has obtained a warrant.

Section 34

Upon receipt of the investigator's report, the Commission may refer the person making the complaint to other procedures that are still available to him or her or may adopt the report and proceed with the complaint. It may also dismiss the complaint if it is of the view that the complaint has not been substantiated or should be dismissed on the grounds mentioned in section 30.

Section 35

The Commission can appoint a conciliator to attempt to bring about a settlement of a complaint. Any information received by the conciliator is confidential and may only be disclosed with the consent of the person who gave the information.

Section 36

Where a settlement is reached, it must be referred to the Commission for its approval.

Section 37

The Minister of Justice and Public Services shall appoint, in consultation with the Commission, a panel of human rights adjudicators. One of the panel members shall be a Chief Adjudicator. The Commission may request the Chief Adjudicator to form a Human Rights Tribunal from the panel to inquire into a complaint and make a decision on it.

Section 38

The Tribunal will be a quasi-judicial body and will have the powers of a superior court. The Tribunal will have a broad discretion to accept evidence.

The Tribunal shall give all parties a full opportunity to be heard. All hearings of the Tribunal shall be public, but the Tribunal may exclude members of the public if it is in the public interest to do so.

Section 39

The Tribunal shall dismiss a complaint if it finds a complaint is not substantiated. If the complaint is substantiated, the Tribunal may make all or any of the following orders against the person found to be discriminating: order to cease such discrimination; order to take measures to prevent such discrimination from occurring in the future; order to provide the person discriminated against with the opportunities denied to that person at the first reasonable opportunity; and order to provide compensation to the victim for wages and expenses incurred by the victim as a result of the discrimination. The Tribunal may also award special compensation not exceeding five thousand dollars if the discrimination was wilful or reckless or if the victim of the discrimination has suffered in respect of feelings or self-respect. Where

a person is found to be discriminating on the basis of handicap, the Tribunal may order that person to adapt that person's premises, facilities, equipment or operations in order to accommodate the handicapped person. However, the Tribunal must first be satisfied that this cost will not constitute undue hardship to the person found to be discriminating.

Section 40

The Tribunal shall attempt to make its decision within thirty days of the conclusion of the hearing.

Section 41

The order of a Tribunal cannot force the removal of a person who holds the position formerly occupied by a person discriminated against if that person accepted the employment in good faith. Moreover, a tenant occupying a unit formerly occupied by a person discriminated against cannot be evicted from that unit if that person obtained the unit in good faith.

Section 42

If a complaint is trivial, frivolous, vexatious or made in bad faith or if it caused undue hardship to the person complained against, the Tribunal may order the Commission to pay some costs to the person complained against.

Section 43

If the person against whom an order has been made does not comply with the order, the Commission may, with the written consent of the victim, apply to the Supreme Court of the Northwest Territories to obtain an interim or permanent injunction or other appropriate relief. This relief is also available to the victim of the discrimination.

Section 44

A decision or order of a Human Rights Tribunal may be appealed to the Supreme Court of the Northwest Territories.

Section 45

This section deals with offences under the *Code*. Any person who fails to comply with the terms of any settlement of a complaint, who obstructs a Tribunal in carrying out its functions or commits certain other prohibited acts is guilty of an offence. An accused is liable on summary conviction to a fine not exceeding $5,000 or, if the accused is an occupational organization, to a fine not exceeding $50,000.

Section 46

If the Minister of Justice and Public Services so approves, the Human Rights Commission may enter into agreements with similar bodies in Canada to share their duties and functions.

Section 47

The Human Rights Commission is required to submit an annual report to the Minister of Justice and Public Services and the Minister shall table that report to the Legislative Assembly. The Human Rights Commission may also submit a special report to the Minister of Justice and Public Services at any time respecting any matter of urgency or importance that should not be deferred until the annual report is considered. All special reports shall also be tabled.

PART 6 – SPECIAL PROGRAMS

Section 48

Special programs which are designed to prevent, eliminate or reduce disadvantage suffered by or likely to be suffered by any group of individuals because of discrimination may be approved or ordered by the Human Rights Commission. Anything done pursuant to a special program shall not be a violation of the *Code*. The Commission may at any time make general recommendations or issue guidelines concerning the objects and content of special programs. The Commission may also vary or impose conditions on the program, or withdraw approval of the program.

Section 49

The Commission may by order exempt a person from any of the provisions of the *Code*, other than Parts 1 and 2.

Section 50

The Commission may give advisory opinions to anyone who wishes to know if he or she is engaging, or is proposing to engage, in conduct which might contravene the *Code*.

Section 51

On the advice of the Minister of Justice and Public Services, the Commissioner of the Northwest Territories may make regulations respecting anti-discriminatory terms and conditions relating to any contract, grant, contribution, loan, guarantee or licence given by the Government of the Northwest Territories or any of its agencies.

PART 7 – APPLICATION AND GENERAL PROVISIONS

Section 52

The *Code* will be binding on the Government of the Northwest Territories and its agencies.

Section 53

Any provision of any legislation of the Territories that is in conflict with the *Code* will be inoperative, unless such legislation is expressly exempted in an Ordinance.

Section 54

An order made under the *Code* may be made an order of the Territorial Court.

Section 55

For the first year that the Human Rights Commission is operating, it may limit or restrict the filing of complaints untii it is able to process all complaints under the *Code* in an orderly manner.

Section 56

Certain complaints relating to superannuation, pension and insurance plans will not be dealt with under the *Code*.

Section 57

No civil action may be taken because of a report of the Human Rights Commission. The Human Rights Commission, its members, the Executive Director, any member of the Tribunal and any person acting under their authority are immune from civil liability for any act or omission while carrying out their responsibilities under the *Code*, provided that the act or omission was done in good faith.

Section 58

No proceeding under the *Code* is invalid by reason of any defect in form or any technical irregularity.

Section 59

Regulations may be made authorizing the Commission to exercise additional powers, and concerning the practice with respect to special programs, the handling of complaints, the enforcement of warrants and orders and the promotion of human rights.

Section 60

The *Code*, or any provision of it, will come into force on a date to be fixed by proclamation.

PROPOSED
HUMAN RIGHTS CODE FOR THE NORTHWEST TERRITORIES

TABLE OF CONTENTS

PREAMBLE

PART 1 — TITLE AND PURPOSE

1. Short Title
2. The Purpose of This Code

PART 2 — RIGHTS ON ARREST OR DETENTION

3. Rights on Arrest or Detention

PART 3 — FREEDOM FROM DISCRIMINATION

4. Equal Treatment Without Discrimination
5. Prohibited Grounds and Definition of Discrimination
   (1) Prohibited Grounds
   (2) Discrimination Defined
   (3) Intention to Discriminate
   (4) Reasonable and *Bona Fide* Exceptions
6. Complaints and Remedies for Discrimination
7. (1) Services and Facilities
   (2) Minimum Age Exception
   (3) Education for Special Groups
8. Residential and Commercial Accommodation
9. Employment
   (1) Refusal to Employ
   (2) Recruitment and Hiring
   (3)&(4) Discriminatory Policies or Practices in Employment or Business Relations
   (5) Limiting Opportunities for Business or Employment
   (6) Voluntary Public Service
   (7) Discrimination in Employment Arising Out of Attachment or Assignment of Wages
   (8) General Exception for Reasonable and *Bona Fide* Employment Qualifications
   (9) Special Programs
   (10) Exception (Non-Profit Organizations)
   (11)(a) Equal Wages
   (b) Comparable Wages
   (c) Assessment of Value of Work
   (d) Separate Establishments
   (e) "Same Employer"
   (f) Different Wages Based on Prescribed Reasonable Factors
   (g) Different Wages Based on Sex
   (h) No Reduction of Wages
   (i) "Wages"
   (12) Collective Agreement No Defence
10. Discriminatory Messages and Signs Prohibited
11. Contracts
12. Intimidation or Discrimination Because of Complaint
13. Harassment
14. Discrimination Because of Association
15. Equality Rights
16. Multicultural Heritage
17. Pensions and Insurance
   (1) Certain Provisions Not Discriminatory
   (2)&(3) Funds and Plans
   (4) Further Limitation
18. Definitions

PART 4 — NORTHWEST TERRITORIES HUMAN RIGHTS COMMISSION

19.(1) Commission Established
(2) Members
(3) Term of Appointment
(4) Tenure
(5) Reappointment
20.(1) Powers, Duties and Functions
(2) (a) Guidelines
(b) Publication or Communication
21.(1) Honoraria
(2) Additional Remuneration
(3) Travelling Expenses
22. Officers and Staff
(1) Chief Human Rights Commissioner
(2) Absence or Incapacity
23. Staff
24. Contractual Assistance
25. Executive Director
26. Privileged Information
27.(1) Head Offices
(2) Other Offices
28.(1) Meetings
(2) Establishment of Committees
29.(1) By-Laws
(2) Financial Management Board Approval

PART 5 — COMPLAINTS OF DISCRIMINATION

30.(1) Complaints
(2) Consent of Victim to Complaint
(3) Investigation Commenced by Commission
(4) Commission to Deal with Complaint
31. Complaints May be Dealt with Together
32. No Complaints to be Dealt with in Certain Cases (Pension Funds)
33. Investigation of Complaints
34.(1) Report of Investigation
(2) Action on Receipt of Report — Referral
(3) Further Action on Receipt of Report
(4) Notice of Dismissal, Referral, or Further Action
(5) Notice of Reconsideration Procedure
(6) Reconsideration of Complaint
(7) Notice to Person Named in Complaint
(8) Reconsidered Decision of Commission Final
35. Conciliation
(1) Appointment of Conciliator
(2) Eligibility
(3) Confidentiality
36. Settlement
(1) Referral of a Settlement to Commission
(2) Approval or Rejection
37. Human Rights Tribunal
(1) Panel of Adjudicators
(2) Appointment and Term
(3) Removal
(4) Vacancies
(5) Chief Adjudicator
(6) Request for Appointment of Tribunal
(7) Appointment of Tribunal
(8) Membership of Tribunal
(9) Eligibility
(10) Reappointment of Tribunal
(11) Chair

38.(1) Duties
(2) Duty of Commission on Appearing
(3) Powers
(4) Limitation in Relation to Evidence
(5) Conciliator Not Competent or Compellable
(6) Hearing in Public
(7) Witness Fees
39.(1) Complaint Dismissed
(2) Order if Complaint is Found Valid
(3) Special Compensation
(4) Order Where Discrimination Based on Handicap
40. Decision Within Thirty Days
41. Limitation of Order
42. Costs
43.(1) Obtaining an Injunction
(2) Recourse of the Victim
44.(1) Appeal from Decision of Tribunal
(2) Record to be Filed in Court
(3) Further Evidence on Appeal
(4) Powers of Court
45. Offences
(1) Offence
(2) Punishment
(3) Prosecution of Occupational Organization
(4) Consent of Executive Member
46. Cooperation with Other Commissions
47. Reports of the Commission
(1)&(2) Annual Report
(3) Special Reports

PART 6 – SPECIAL PROGRAMS

48. Affirmative Action
49. Exemptions
50.(1) Advisory Opinions
(2) Revocation or Modification of Opinion
(3) Reliance on Opinion
(4) Commencement
51. Regulations Concerning Government Contracts

PART 7 – APPLICATION AND GENERAL PROVISIONS

52. Binding on Government
53. Precedence of Human Rights Ordinance
54. Enforcement of Orders
55. Priorities of Complaints
56.(1) No Complaints to be Dealt with in Certain Cases
(2) Further Limitation
(3) Review of Ordinances
57. Immunity from Liability
58. Technical Defects
59. Regulations
60. Commencement

PREAMBLE

(1) The people of the Northwest Territories believe that recognition and respect for the dignity and equal rights of all members of the human family is the foundation of freedom, justice and peace.

(2) Faith in fundamental human rights as proclaimed through the Universal Declaration of Human Rights is an enduring principle of democratic societies.

(3) It is public policy in the Northwest Territories that every man and woman is free and equal in dignity and rights.

(4) It is affirmed that while exercising his or her rights and freedoms, everyone should recognize the rights and individual merits of others.

(5) Recalling that the first to inhabit the lands of the Northwest Territories were the aboriginal peoples, and convinced that their important position in our society warrants special attention, it is affirmed that this Code does not affect aboriginal rights as determined under the Constitution of Canada.

(6) The Canadian Constitution, which includes the Charter of Rights and Freedoms, applies to all governments in Canada.

(7) The guarantee of human rights is worthy of protection through the rule of law.

Now therefore, the Commissioner of the Northwest Territories, by and with the advice and consent of the Legislative Assembly of the said Territories, enacts as follows:

PART 1
TITLE AND PURPOSE
SHORT TITLE

1. This Ordinance may be cited as the *Human Rights Code for the Northwest Territories.*

THE PURPOSE OF THIS CODE

2. The goals of this Human Rights Code are:

(a) Everyone should have an equal opportunity to make the life that he or she is able to and wishes to have, without being hindered or prevented from doing so by discrimination.

(b) Everyone should act in accordance with her or his duties and obligations as a member of the community and society.

(c) Discrimination should be discouraged and remedied so that people are treated solely on the basis of their personal merits in all matters.

PART 2
RIGHTS ON ARREST OR DETENTION

3. Every person shall enjoy the right to freedom from arbitrary arrest or detention, the right to notice of the reasons for detention, and notice of any charges on which he or she is detained. Every person who is arrested or detained shall enjoy the right to retain and instruct counsel without undue delay (and to be informed of that right) and the right to a prompt judicial determination of the legality of the detention.

PART 3
FREEDOM FROM DISCRIMINATION
EQUAL TREATMENT WITHOUT DISCRIMINATION

4. Every person has the right to equal treatment with respect to employment, accommodation, contracts, services, goods and facilities and other activities and matters referred to in this Code, without discrimination.

PROHIBITED GROUNDS AND DEFINITION OF DISCRIMINATION

5. (1) For all purposes of this Code, race, colour, origin, religion, language, sex, age, family status, handicap, source of income or livelihood, political or other opinion and offence record are prohibited grounds of discrimination.

(2) **"Discrimination"** means:

(a) detrimental treatment of individuals or groups on the basis of any ground listed in subsection (1);

(b) detrimental treatment of individuals on the basis of their actual or presumed membership in or association with some class or group of persons, rather than on the basis of personal merit;

(c) any distinction, exclusion, restriction or preference based on any ground listed in subsection (1) which has the purpose or effect of nullifying or impairing the right to equal treatment; or

(d) detrimental treatment of individuals arising from any policy, practice, requirement or qualification which is such that

(i) the proportion of persons of one racial group or origin who can comply with it is considerably smaller than the proportion of persons not of the racial group or origin who can comply with it; or

(ii) the proportion of persons of one gender who can comply with it is considerably smaller than the proportion of persons of the other gender who can comply with it.

(3) Where the effect of any activity, practice or matter to which this Code applies is to discriminate against any individual, it is discrimination notwithstanding any lack of intention to discriminate.

(4) Subject to any specific provisions found later in this Code, a distinction, exclusion, restriction, preference, policy, practice, requirement or qualification does not amount to discrimination under paragraph (2)(c) or (d) where:

(a) it is reasonable and *bona fide* in the circumstances, assessed in the light of the public policy expressed in section 2 of this Code; or

(b) it is an approved part of a special program approved or ordered pursuant to section 39, 48 or 49 of this Code.

COMPLAINTS AND REMEDIES FOR DISCRIMINATION

6. A complaint may be made to the Northwest Territories Human Rights Commission about any action or practice which is prohibited by this Code. The Commission, according to procedures described in Part 4, may try to work out a settlement which is acceptable to all parties, or arrange for a hearing by a Human Rights Tribunal. A Tribunal has the power to dismiss a complaint or to make any of the orders provided for in Part 4.

SERVICES AND FACILITIES

7. (1) No person shall discriminate, by denial, restriction, or otherwise, with respect to any service, facility, goods, accommodation, rights, licence or privilege available or accessible to the public or a section of the public.

Minimum Age Exception

(2) Nothing in subsection (1) prohibits the denial or refusal of any service, accommodation, facility, goods, right, licence or privilege to a person who has not attained the relevant minimum age if the denial or refusal is in accordance with any law or regulation in force in the Northwest Territories.

Education for Special Groups

(3) A school, college, university, or other institution or place of learning, or a program of vocational training or apprenticeship, which exclusively enrols persons of a particular sex or religion or with a particular handicap, is not prevented from doing so by subsection (1).

RESIDENTIAL AND COMMERCIAL ACCOMMODATION

8. (1) No person shall discriminate with respect to occupancy of commercial premises or residential accommodation.

(2) Subsection (1) does not apply to discrimination on the basis of the sex of a person with respect to housing accommodation, where the occupancy of all the housing accommodation in a building, except that of the owner or an agent of the owner or the family of either of them, is restricted to individuals who are of the same sex.

(3) Subsection (1) does not apply to discrimination with respect to the renting or leasing of any dwelling unit in any housing accommodation that is composed of not more than two dwelling units, where the owner of the housing accommodation or an agent of the owner or the family of either of them resides in one of the two dwelling units.

EMPLOYMENT
Refusal to Employ

9. (1) No person shall directly or indirectly refuse to employ or to continue to employ any person on the basis of a prohibited ground of discrimination.

(2) (a) No person shall use, display, circulate, publish, transmit, broadcast or otherwise communicate an advertisement in connection with employment, promotion or advancement that discriminates or indicates discrimination or an intention to discriminate.

(b) In connection with potential employment, promotion or advancement, no person shall make any written or oral inquiry concerning a prohibited ground of discrimination.

(c) No person shall use a form as part of hiring, promotion or advancement procedures that discriminates or indicates discrimination or an intention to discriminate.

(d) No person shall require an applicant for employment, promotion or advancement to provide medical information concerning himself or herself until an offer of employment, promotion or advancement has been made to that applicant, but an offer may be made conditional on the provision of medical information or submission to a medical examination where such conditional offer is reasonable and *bona fide* in the circumstances.

(e) Paragraphs (a) to (d) do not preclude or prohibit recruitment, hiring, promotion or advancement practices which are part of a special program approved or ordered pursuant to section 39, 48 or 49 which might otherwise be discrimination under paragraph (9)(b), (c) or (d).

Discriminatory Policies or Practices in Employment or Business

(3) (a) No person shall directly or indirectly in the course of employment differentiate adversely in relation to an employee on the basis of a prohibited ground of discrimination.

(b) No person shall

(i) establish or carry out a policy or practice, or

(ii) enter into an agreement affecting recruitment, referral, hiring, training, apprenticeship, promotion, seniority, transfer, suspension, dismissal, or any other matter relating to actual or potential employment

that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

(4) No occupational organization shall

(a) exclude any person from full membership,

(b) expel or suspend a member, or

(c) restrict, classify, segregate or otherwise act in relation to a member in a way that would limit his or her business or employment opportunities or otherwise adversely affect the status of the member

on a prohibited ground of discrimination.

Limiting Opportunities for Business or Employment

(5) No employer, occupational organization, employment or personnel department, agency or office shall limit the business or employment opportunities of any person in any manner referred to in subsections (1) to (4).

Voluntary Public Service

(6) No person carrying out a public function, including fire protection, education or hospital services, through the use in whole or in part of volunteers, shall discriminate in the exclusion, expulsion or limitation of any volunteer or volunteer applicant.

Discrimination in Employment Arising Out of Attachment or Assignment of Wages

(7) (a) No employer, or person acting on behalf of an employer, shall refuse to employ or to continue to employ or otherwise treat unequally any person in regard to employment or any term or condition of employment because of that person's wages having been, being or becoming subject to attachment or seizure in satisfaction of any claim against that person.

(b) Unequal treatment based on a reasonable and *bona fide* occupational qualification with respect to persons whose duties include the collecting, receiving, depositing, or computer or mechanical processing of money owed to or belonging to the employer does not constitute a failure to comply with this subsection.

General Exception for Reasonable and Bona Fide Employment Qualifications

(8) It is not discrimination under subsections (1) to (7) if any refusal, exclusion, suspension, limitation, specification or preference is established by an employer or occupational organization to be based on a reasonable and a *bona fide* occupational requirement under the circumstances, including the purposes of this Code.

Special Programs

(9) It is not discrimination to adopt or carry out a special program, plan or arrangement pursuant to section 39, 48 or 49 of this Code.

Exception (Non-Profit Organizations)

(10)(a) This section does not apply where a charitable, religious, philanthropic, educational or social institution, organization, society or corporation not operated for private profit and which is primarily engaged in serving the interests of persons identified by their race, colour, origin, religion, language, sex, age, family status, handicap or offence record gives preference in employment to persons similarly identified, if the preference is a reasonable and *bona fide* qualification in the circumstances including the nature of the employment and the objects of the institution, organization, society or corporation.

(b) This subsection does not apply so as to permit the payment of wages in a manner contrary to subsection (11).

Equal Wages

(11)(a) No person shall establish or maintain differences in wages between male and female employees employed in the same establishment or by the same employer who are performing work of equal value.

Comparable Wages

(b) No person shall establish or maintain differences in wages between male and female employees employed in the same establishment or by the same employer when the differences are significantly disproportionate to the relative value of the work which the male and female employee respectively are performing.

Assessment of Value of Work

(c) In assessing the value of work performed by employees employed in the same establishment or by the same employer, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.

Separate Establishments

(d) Separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in wages between male and female employees shall be deemed for the purposes of this section to be a single establishment.

"Same Employer"

(e) Where associated or related businesses or operations are carried on by more than one corporation, society, firm or individual, all of whom are under common control or direction, for the purposes of this section the corporations, societies, firms or individuals may be treated as if they were a single employer of the persons employed in the associated or related businesses or operations.

Different Wages Based on Prescribed Reasonable Factors

(f) Notwithstanding paragraphs (a) and (b), it is not discrimination to pay to male and female employees different wages if the difference is based on a factor prescribed by guidelines issued by the Northwest Territories Human Rights Commission to be a reasonable factor that justifies the difference.

Different Wages Based on Sex

(g) For greater certainty, sex does not constitute a reasonable factor justifying a difference in wages.

No Reduction of Wages

(h) An employer shall not reduce wages in order to attempt to comply with this section.

"Wages"

(i) For the purposes of this section, "wages" means any form of remuneration payable for work performed by an individual and includes salaries, commissions, fees, vacation pay, dismissal wages, bonuses, reasonable value for board, rent, housing, lodging, payment in kind, employer contributions to pension funds or plans, long-term disability and other insurance plans and any other advantage received directly or indirectly from the employer.

Collective Agreement No Defence

(12) It is not defence to a violation of this section that the discrimination is permitted or required by a contract to which the person discriminated against is not a party, or by any collective agreement.

DISCRIMINATORY MESSAGES AND SIGNS PROHIBITED

10. No person shall publish, broadcast, transmit, display, or otherwise communicate before or to the public or a section of the public, or cause to be published, broadcast, transmitted, displayed or communicated before or to the public or a section of the public any notice, sign, symbol, emblem, advertisement, statement or other message which

(a) discriminates or indicates discrimination or an intention to discriminate;
(b) advocates, incites or is intended to incite others to discriminate; or
(c) creates imminent danger that a person or group of persons will be exposed to violence or hatred on the basis of any ground listed in subsection 5(1).

CONTRACTS

11.(1) No person shall make or attempt to make a written or verbal contract which

(a) discriminates against any person or class of persons; or
(b) includes a term or condition that discriminates against any person or class of persons.

Unless permitted otherwise by this Code, a discriminatory term or condition of a contract is deemed to be without effect.

(2) As affirmed by the preamble to this Code, settlements arising from aboriginal claims are not affected by this section.

INTIMIDATION OR DISCRIMINATION BECAUSE OF COMPLAINT

12. No person shall threaten, intimidate, retaliate or discriminate against an individual because that individual has made a complaint or given evidence or assisted in any way in respect of the initiation, settlement or prosecution of a complaint or other proceeding under this Code or because that individual proposes to do so.

HARASSMENT

13. No person shall, in the course of any activity, practice or matter to which this Code applies, harass any individual or group on the basis of any ground listed in subsection 5(1), or permit such harassment by others in any such matter, activity or practice for which that person is responsible.

DISCRIMINATION BECAUSE OF ASSOCIATION

14. It is unlawful under this Code to discriminate against a person, because of actual or alleged relationships, association or dealings between that person and a person or persons identified by a prohibited ground of discrimination.

EQUALITY RIGHTS

15.(1) Every person and every class of person shall enjoy the right to equality before and under the law, and equal protection and benefit of the law without discrimination.

(2) The rights specified in subsection (1) are subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

(3) The rights guaranteed by this section are in addition to the other rights set out in this Code, and shall not be construed as limiting them.

(4) As affirmed by the preamble to this Code, settlements arising from aboriginal claims are not affected by this section.

(5) For greater specificity, this section does not preclude any program, plan or arrangement pursuant to section 39, 48 or 49 of this Code.

MULTICULTURAL HERITAGE

16. This Code shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of the residents of the Northwest Territories.

PENSIONS AND INSURANCE
Certain Provisions Not Discriminatory

17.(1) A provision of a pension or insurance fund or plan that preserves rights acquired prior to the commencement of this Code or that preserves pension or other benefits accrued prior to that time does not constitute the basis for a complaint that an employer is engaging or has engaged in discrimination.

Funds and Plans

(2) The establishment of separated pension funds or plans for different groups of employees does not constitute the basis for a complaint under Part 4 that an employer is engaging or has engaged in discrimination if the employees are not grouped in those funds or plans according to a prohibited ground of discrimination.

(3) The Commissioner, upon the recommendation of the Executive Member, may by regulation prescribe the provisions of any pension or insurance fund or plan, in addition to those provisions specified in this section, that do not constitute the basis for a complaint that an employer is engaging or has engaged in discrimination.

Further Limitation

(4) This Code does not apply to or in respect of any superannuation or pension fund or plan established by an Ordinance enacted before the coming into force of this section.

DEFINITIONS

18. "Discriminate" means to act or be in breach of this Code in a manner prohibited by section 5.

"Employment" includes

(a) work or employment which is actual or potential, full-time or part-time, permanent, seasonal or casual, paid or unpaid; and

(b) work performed by a worker for a person under a contract with the worker, or under a contract with another person with respect to the worker's services.

"Family status" includes "family" and means relationship by blood or by marriage, including custom marriage, common-law marriage, living together (cohabitation), being single, engaged, separated, divorced, or widowed, and change of marital or family status.

"Handicap" means any previous or existing mental or physical disability and includes physical characteristics caused by bodily injury, birth defect or illness, previous or existing dependence on alcohol, and reliance on any remedial method or device directly related to the handicap.

"Harassment" means

(a) a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome, and

(b) without restricting the generality of paragraph (a),

(i) a sexual solicitation or advance made to an individual by a person in a position to confer or deny any benefit to that individual, if the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome, or

(ii) any reprisal or threat of reprisal against an individual for rejecting such sexual solicitation or advance.

"Language" includes accent, dialect, script and method or form of communication.

"Occupational organization" includes an employers' organization; trade, business or professional organization; trade union or other employee organization; and any other organization for which participation in a particular occupation is a requirement of membership, or membership in which is a requirement to engage in a particular occupation.

"Organization" includes "association" and "society" and any branch, local, division, agency or office of an organization, whether incorporated or unincorporated.

"Origin" includes ancestry, nationality, place of origin or residence, alleged or actual race, and ethnic, family, linguistic, social, national, provincial or territorial origin.

"Person", in addition to the meaning given by the *Interpretation Ordinance*, includes a group or class of persons, and an occupational or other organization as defined in this section.

"Political or other opinion" includes political association and political activity. An expression or manifestation of an opinion which advocates or encourages discrimination on this or another prohibited ground may be found to be in breach of this Code notwithstanding that it involves political or other opinion.

"Religion" includes creed, religious belief, religious association and religious activity.

"Service, facility, goods, accommodation, rights, licence or privilege", without restricting the generality or this expression, includes any benefit provided and any practice, activity or undertaking carried out by

(a) the Government of the Northwest Territories;
(b) any local government in the Northwest Territories;
(c) any board or commission created by or subject in this regard to the laws of the Northwest Territories;
(d) any place or program of education listed in subsection 7(3); or
(e) the employees or agents of any of them.

"Sex": for greater specificity, discrimination on the basis of pregnancy is included in this prohibited ground.

PART 4
NORTHWEST TERRITORIES HUMAN RIGHTS COMMISSION

COMMISSION ESTABLISHED

19.(1) A commission is hereby established to be known as the Northwest Territories Human Rights Commission (hereinafter in this Code referred to as the "Commission") consisting of a Chief Human Rights Commissioner and not less than two nor more than six other members, to be appointed by the Executive Member.

Members

(2) The Chief Human Rights Commissioner and each other member shall be appointed as members of the Commission to serve on a part-time basis.

Term of Appointment

(3) Each member of the Commission may be appointed for a term not exceeding three years but the terms of office shall be varied to ensure that the terms of members are not all completed in the same year.

Tenure

(4) Each member of the Commission holds office during good behaviour but may be removed at any time for good and sufficient cause if two thirds of the Legislative Assembly approve a resolution to that effect.

Reappointment

(5) A member of the Commission is eligible to be re-appointed in the same or another capacity.

POWERS, DUTIES AND FUNCTIONS

20.(1) In addition to its duties under Part 5 with respect to complaints regarding discriminatory practices, the Commission is generally responsible for the administration of this Code and

(a) shall develop and conduct information programs to foster public understanding of this Code and of the role and activities of the Commission thereunder and to foster public recognition of the principles described in section 2;

(b) shall undertake or sponsor research programs relating to its duties and functions under this *Code* and respecting the principles described in section 2;

(c) shall maintain close liaison with similar bodies or authorities in the provinces and with the Canadian Human Rights Commission in order to foster common policies and practices and to avoid conflicts respecting the handling of complaints in cases of overlapping jurisdiction;

(d) may consider such recommendations, suggestions and requests concerning human rights and freedoms as it receives from any source and comment on any such recommendation, suggestion or request;

(e) shall carry out or cause to be carried out studies concerning human rights and freedoms, including such studies as may be referred by the Executive Member and report the results of each such study together with such recommendations in relation thereto as it considers appropriate;

(f) may review any regulations, rules, orders, by-laws and other instruments made in the Northwest Territories, and, where deemed by the Commission to be appropriate, comment on any provision thereof that in its opinion could be improved to further the principles set out in section 2;

(g) shall, so far as is practical and consistent with the application of this Code, endeavour by persuasion, publicity or any other means that it considers appropriate to discourage and reduce discrimination; and

(h) shall encourage the development and improvement of arrangements for handicapped persons to have access to goods, services, facilities, accommodation and employment that are customarily available to other persons.

Guidelines

(2) (a) The Commission may, at any time on application or on its own initiative, by order, issue a guideline setting forth the extent to which and the manner in which, in the opinion of the Commission, any provision of this Code applies in a class of cases described in the guideline; and any such guideline is, until it is subsequently revoked or modified, binding on the Commission and any Human Rights Tribunal appointed pursuant to this Code with respect to the resolution of any complaint under this Code regarding a case falling within the description contained in the guideline.

Publication or Communication

(b) Each guideline issued under paragraph 2(a) that relates to the manner in which a provision of this Code applies in a class of cases shall be published in the *Northwest Territories Gazette*, and each such guideline that applies in a particular case shall be communicated to the persons directly affected thereby in such manner as the Commission deems appropriate.

REMUNERATION OF COMMISSION
Honoraria

21.(1) Each member of the Commission may be paid such remuneration as is prescribed by regulation for attendance at meetings of the Commission or any committee thereof that the member is requested by the Chief Human Rights Commissioner to attend.

Additional Remuneration

(2) A member of the Commission, for any period during which that member, with the approval of the Chief Human Rights Commissioner, performs duties and functions additional to that member's normal duties and functions on behalf of the Commission, may be paid such additional remuneration as is prescribed by by-law of the Commission.

Travelling Expenses

(3) Each member of the Commission is entitled to be paid such travel and living expenses incurred by the member in the performance of duties and functions under this Code as are prescribed by by-law of the Commission.

OFFICERS AND STAFF
Chief Human Rights Commissioner

22.(1) The Chief Human Rights Commissioner is the chief executive officer of the Commission and has supervision over and direction of the Commission and its staff and shall preside at meetings of the Commission.

Absence or Incapacity

(2) In the event of the absence or incapacity of the Chief Human Rights Commissioner or if that office is vacant all the powers, duties and functions of the Chief Commissioner may be exercised or performed by another member elected by the remaining members as prescribed by by-law of the Commission.

STAFF

23. Such officers and employees as are necessary for the proper conduct of the work of the Commission shall be appointed.

CONTRACTUAL ASSISTANCE

24. The Commission may, for specific projects, enter into contracts for the services of persons having technical or specialized knowledge of any matter relating to the work of the Commission to advise and assist the Commission in the exercise or performance of its powers, duties and functions under this Code, and such persons may be paid such remuneration and expenses as may be negotiated by the Commission.

EXECUTIVE DIRECTOR

25.(1) The Commission shall appoint an Executive Director to carry out, in accordance with the Commission's policies and directives, the administration of this Code.

(2) The Executive Director shall be remunerated pursuant to section 24 and be responsible to and report to the Commission.

(3) The Executive Director shall be full-time and shall not during his or her term of office be an employee or agent of the Government of the Northwest Territories or any of its agencies.

(4) The Executive Director shall direct the day-to-day activities of the Commission's staff with respect to complaint investigation, education and outreach and all other responsibilities of the Commission under this Code.

PRIVILEGED INFORMATION

26. No person who, on behalf of the Commission, receives information or any communication for the purposes of this Code shall be required to give evidence in any proceeding respecting that information or communication except under this Code.

HEAD OFFICE

27.(1) The head office of the Commission shall be in Yellowknife.

Other Offices

(2) The Commission may establish such regional or branch offices as it considers necessary to carry out its powers, duties and functions under this Code.

MEETINGS

28.(1) The Commission may meet for the conduct of its affairs at such times and in such places as the Chief Commissioner considers necessary or desirable and a decision of the majority of the members present at a meeting of the Commission, if the members present constitute a quorum, is a decision of the Commission.

Establishment of Committees

(2) For the purpose of the affairs of the Commission, the Chief Commissioner may establish committees of the Commission and any of the powers, duties and functions of the Commission except the making of by-laws may, as directed by the Commission, be exercised or performed by all or any of those committees.

BY-LAWS

29.(1) The Commission may make by-laws for the conduct of its affairs and, without limiting the generality of the foregoing, may make by-laws

(a) respecting the calling of meetings of the Commission or any committee thereof and the fixing of quorums for the purposes of such meetings;
(b) respecting the conduct of business at meetings of the Commission and the establishment of committees of the Commission, the delegation of powers, duties and functions to any such committees and the fixing of quorums for meetings thereof;
(c) prescribing the rates of remuneration to be paid to members of a Human Rights Tribunal; and
(d) prescribing reasonable rates of travel and living expenses to be paid to members of the Commission and members of a Human Rights Tribunal.

Financial Management Board Approval

(2) No by-law made under paragraph (1)(c) or (d) has effect unless it is approved by the Financial Management Board.

PART 5
COMPLAINTS OF DISCRIMINATION

COMPLAINTS

30.(1) Any person or group of persons having reasonable grounds for believing that a person is engaging in or has engaged in discrimination contrary to this Code may file with the Commission a complaint in a form or manner acceptable to the Commission.

Consent of Victim to Complaint

(2) If a complaint is made by someone other than the person who is alleged to be the victim of the discrimination to which the complaint relates, the Commission may refuse to deal with the complaint unless the alleged victim consents thereto.

Investigation Commenced by Commission

(3) Where the Commission has reasonable grounds for believing that a person is engaging in or has engaged in discrimination contrary to this Code, the Commission may initiate a complaint, whether or not a complaint has been filed by any person.

Commission to Deal with Complaint

(4) Subject to subsection (2) and section 31, the Commission shall deal with any complaint filed with it, unless in respect of that complaint it appears to the Commission that

(a) the alleged victim of the discrimination to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available, that the complainant has failed to exhaust all reasonable steps to pursue such procedures and that this failure is attributable to the complainant; or

(b) the complaint

(i) is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under another Ordinance or an Act of Parliament,

(ii) is beyond the jurisdiction of the Commission,

(iii) is trivial, frivolous, vexatious or made in bad faith, or

(iv) is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint.

COMPLAINTS MAY BE DEALT WITH TOGETHER

31. Where complaints are filed jointly or separately by more than one individual or group alleging that a particular person is engaging or has engaged in discrimination or a series of similar discriminatory practices and the Commission is satisfied that the complaints involve substantially the same issues of fact and law, it may deal with such complaints together under this Part and may appoint a single Human Rights Tribunal to inquire into such complaints.

NO COMPLAINTS TO BE DEALT WITH IN CERTAIN CASES (PENSION FUNDS)

32. No complaint may be dealt with by the Commission pursuant to section 30 that relates to the terms and conditions of a superannuation or pension fund or plan, if the relief sought would require action to be taken that would deprive any contributor to, participant in or member of such fund or plan of any right acquired under the fund or plan before the commencement of this Part or of any pension or other benefits accrued under such fund or plan to that time, including

(a) any rights and benefits based on a particular age of retirement; and

(b) any accrued survivor's benefits.

INVESTIGATION OF COMPLAINTS

33.(1) An investigation of a complaint by the Commission may be made by a member or employee of the Commission or such other person who is authorized by the Commission for the purpose.

(2) A person authorized to investigate a complaint may

(a) enter any place, other than a place that is being used as a dwelling, at any reasonable time, for the purpose of investigating the complaint;

(b) request the production for inspection and examination of documents or things that are or may be relevant to the investigation;

(c) upon giving a receipt therefor, remove from a place documents produced in response to a request under paragraph (b) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced or furnished them; and

(d) question a person on matters that are or may be relevant to the complaint, subject to the person's right to have counsel or a personal representative present during such questioning, and may exclude from the questioning any person who may be adverse in interest to the complainant.

(3) A person investigating a complaint shall not enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under subsection (7).

(4) Subject to subsection (3), if a person who is or may be a party to a complaint denies entry to any place, or instructs the person investigating to leave the place, or impedes or prevents an investigation therein, the Commission may authorize an employee or member to apply to a justice of the peace or Territorial Court Judge for a warrant to enter under subsection (7).

(5) If a person refuses to comply with a request for production of documents or things, the Commission may authorize an employee or member to apply to a justice of the peace or Territorial Court Judge for a search warrant under subsection (6).

(6) Where a justice of the peace or Judge is satisfied on evidence upon oath that there are in a place documents that there is reasonable ground to believe will afford evidence relevant to the complaint, the justice or Judge may issue a warrant in the prescribed form authorizing a person named in the warrant to search a place for any such documents, and to remove them for the purposes of making copies thereof or extracts therefrom, and the documents shall be returned promptly to the place from which they were removed.

(7) Where a justice of the peace or Judge is satisfied by evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered to investigate a complaint, the justice or Judge may issue a warrant in the prescribed form authorizing such entry by a person named in the warrant.

(8) A warrant issued under subsection (6) or (7) shall be executed at reasonable times as specified in the warrant.

(9) Every warrant shall name a date on which it expires, which shall be a date not later than fifteen days after it is issued.

(10) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede an investigation under this Code.

(11) Copies of, or extracts from, documents removed from premises under paragraph (2)(c) or subsection (6) certified as being true copies of the originals by the person who made them, are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents of which they are copies or extracts.

(12) The Commissioner, upon the recommendation of the Executive Member, may make regulations prescribing procedures to be followed and authorizing the manner in which complaints are to be investigated and providing procedures to facilitate the purposes of this section.

REPORT OF INVESTIGATION

34.(1) A human rights officer shall, as soon as possible after the conclusion of an investigation, submit to the Commission a report of the findings of the investigation.

Action on Receipt of Report — Referral

(2) If, on receipt of a report mentioned in subsection (1), the Commission is satisfied

(a) that the complainant ought to exhaust grievance or review procedures otherwise reasonably available, or

(b) that the complaint could more appropriately be dealt with, initially or completely, by a procedure provided for under another Ordinance or an Act of Parliament,

it shall refer the complainant to the appropriate authority.

Further Action on Receipt of Report

(3) On receipt of a report mentioned in subsection (1), the Commission

(a) may adopt the report and proceed under section 35, 36 or 37 of this Code if it is satisfied that the complaint to which the report relates has been substantiated and should not be referred pursuant to subsection (2) or dismissed on any ground mentioned in subparagraphs 30(4)(b)(ii) to (iv); or

(b) shall dismiss the complaint to which the report relates if it is satisfied that the complaint has not been substantiated or should be dismissed on any ground mentioned in subparagraphs 30(4)(b)(ii) to (iv).

Notice of Dismissal, Referral, or Further Action

(4) After receipt of a report mentioned in subsection (1), the Commission

(a) shall notify in writing the complainant and the person against whom the complaint was made of its action under subsection (2) or (3) and its reasons therefor; and

(b) may, in such manner as it sees fit, notify any other person whom it considers necessary to notify of its action under subsection (2) or (3).

Notice of Reconsideration Procedure

(5) Where the Commission decides not to appoint a board of inquiry, it shall inform the complainant of the procedure under subsection (6) for having the decision reconsidered.

Reconsideration of Complaint

(6) Within a period of fifteen days of the date of mailing the decision and reasons therefor mentioned in subsection (2) or (3), or such longer period as the Commission may for special reasons allow, a complainant may request the Commission to reconsider its decision by filing a letter asking for reconsideration and containing a concise statement of facts upon which the application is based.

Notice to Person Named in Complaint

(7) Upon receipt of an application for reconsideration the Commission shall, as soon as is practicable, notify the person complained against of the application and affort the person an opportunity to make written submissions with respect thereto within such time as the Commission specifies.

Reconsidered Decision of Commission Final

(8) Every decision of the Commission on reconsideration together with the reasons therefor shall be recorded in writing and promptly communicated to the complainant and the person complained against, and the decision shall be final.

CONCILIATION
Appointment of Conciliator

35.(1) Subject to subsection (2), the Commission may, on the filing of a complaint, or if the complaint has not been

(a) settled in the course of investigation,
(b) referred or dismissed under subsection 34(2) or (3), or
(c) settled after receipt by the parties of the notice referred to in subsection 34(4),

appoint a person (hereinafter referred to as a "conciliator") for the purpose of attempting to bring about a settlement of the complaint.

Eligibility

(2) A person is not eligible to act as a conciliator in respect of a complaint if that person has already acted as an investigator in respect of that complaint, but the Executive Director of the Commission may act as a conciliator.

Confidentiality

(3) Any information received by a conciliator in the course of attempting to reach a settlement of a complaint is confidential and may not be disclosed except with the consent of the person who gave the information.

SETTLEMENT
Referral of a Settlement to Commission

36.(1) When, at any stage after the filing of a complaint and before the commencement of a hearing before a Human Rights Tribunal in respect thereof, a settlement is agreed on by the parties, the terms of the settlement shall be referred to the Commission for approval or rejection.

Approval or Rejection

(2) If the Commission approves or rejects the terms of a settlement referred to in subsection (1), it shall so certify and notify the parties.

HUMAN RIGHTS TRIBUNAL
Panel of Adjudicators

37.(1) There shall exist a panel of human rights adjudicators, consisting of at least three persons who are not members of the Commission.

Appointment and Term

(2) Members of the panel shall be appointed in the same manner that Commission members are appointed under section 19, after consultation with the Commission, and shall, subject to subsection (3), hold membership on the panel for a term of three years, and shall not be appointed to more than two consecutive terms.

Removal

(3) Any member of the panel may be removed from the panel at any time by resolution of the Legislative Assembly if the Legislative Assembly is satisfied that there is good and sufficient cause for such removal.

Vacancies

(4) Whenever, due to removal, resignation, death or the completion of a term, a person ceases to be a member of the panel, a replacement may be appointed under subsection (2), and a replacement shall be appointed as soon as possible whenever the panel membership falls below three.

Chief Adjudicator

(5) One member of the panel of human rights adjudicators shall be designated as Chief Adjudicator by the Executive Member and shall continue to hold that position while he or she remains a member of the panel.

Request for Appointment of Human Rights Tribunal

(6) The Commission may, at any stage after the filing of a complaint, request that the Panel of Adjudicators appoint a Human Rights Tribunal (hereinafter in this Part referred to as a "Tribunal") to inquire into the complaint.

Appointment of Tribunal

(7) Within thirty days after receiving a request to do so from the Commission under subsection 37(6), the Chief Adjudicator shall appoint a Tribunal consisting of one or more members of the panel of human rights adjudicators to hear and decide the complaint.

Membership of Tribunal

(8) A tribunal may not consist of more than three members.

Eligibility

(9) No member, officer or employee of the Commission, and no individual who has investigated or acted as a conciliator in respect of the complaint in relation to which a Tribunal is appointed, is eligible to be appointed to the Tribunal.

Reappointment of Tribunal

(10) Where a Tribunal for any reason is unable to exercise its powers, the Panel of Adjudicators may appoint a new Tribunal in its place.

Chair

(11) Where a Tribunal consists of more than one member, the Panel of Adjudicators shall designate one of the members to chair the Tribunal.

DUTIES

38.(1) A Tribunal shall, after due notice to the Commission, the complainant, the person against whom the complaint was made and, at the discretion of the Tribunal, any other interested party, inquire into the complaint in respect of which it was appointed and shall give all parties to whom notice has been given a full and ample opportunity, in person or through counsel, of appearing before the Tribunal, presenting evidence and making representations to it.

Duty of Commission on Appearing

(2) The Commission, in appearing before a Tribunal, presenting evidence and making representations to it, shall adopt such positions as, in its opinion, is in the public interest having regard to the nature of the complaint being inquired into.

Powers

(3) In relation to a hearing under this Part, a Tribunal may

(a) in the same manner and to the same extent as a superior court of record, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce such documents and things as the Tribunal deems requisite to the full hearing and consideration of the complaint;

(b) administer oaths; and
(c) receive and accept such evidence and other information, whether on an oath or by affidavit or otherwise, as the Tribunal sees fit, whether or not such evidence or information is or would be admissible in a court of law.

Limitation in Relation to Evidence

(4) Notwithstanding paragraph (3)(c), a Tribunal may not receive or accept as evidence anything that would be inadmissible in a court by reason of any privilege under the law of evidence.

Conciliator Not Competent or Compellable

(5) Notwithstanding subsection (2), a conciliator appointed to settle a complaint is not a competent or compellable witness at a hearing of a Tribunal appointed to inquire into the complaint.

Hearing in Public

(6) A hearing of a Tribunal shall be public, but a Tribunal may exclude members of the public during the whole or any part of a hearing if it considers such exclusion to be in the public interest.

Witness Fees

(7) Any person summoned to attend a hearing pursuant to this section is entitled in the discretion of the Tribunal to receive the like fees and allowances for so doing as if summoned to attend before the Supreme Court of the Northwest Territories.

COMPLAINT DISMISSED

39.(1) If, at the conclusion of its inquiry, a Tribunal finds that the complaint to which the inquiry relates is not substantiated on the balance of probabilities, it shall dismiss the complaint.

Order if Complaint is Found Valid

(2) If, at the conclusion of its inquiry, a Tribunal finds that the complaint to which the inquiry relates is substantiated, subject to subsection (4) and section 41, it may make an order against the person found to be engaging or to have engaged in the discrimination and include in such order any of the following terms that it considers appropriate:

(a) that such person cease such discrimination and in order to prevent the same or a similar practice from occurring in the future, take measures, including the implementation or adoption of a special program, plan or arrangement referred to in section 48;

(b) that such person make available to the victim of the discrimination on the first reasonable occasion such rights, opportunities or privileges as, in the opinion of the Tribunal, are being or were denied the victim as a result of the discrimination; or

(c) that such person compensate the victim, as the Tribunal may consider proper for any or all of the wages that the victim was deprived of and any expenses incurred by the victim as a result of the discrimination.

Special Compensation

(3) In addition to any order that the Tribunal may make pursuant to subsection (2), if the Tribunal finds that

(a) a person is engaging or has engaged in discrimination wilfully or recklessly, or

(b) the victim of the discrimination has suffered in respect of feelings or self-respect as a result of the practice

the Tribunal may order the person to pay such compensation to the victim, not exceeding five thousand dollars, as the Tribunal may determine.

Order Where Discrimination Based on Handicap

(4) If, at the conclusion of its inquiry into a complaint regarding discrimination based on a handicap, the Tribunal finds that the complaint is substantiated only because the premises, facilities, equipment or operations of the person found to be engaging or to have engaged in the discrimination require adaptation to meet the needs of a person arising from such a disability,

(a) the Tribunal shall make such order pursuant to paragraph 2(a) for that adaptation as it considers appropriate and it is satisfied will not result in costs or business inconvenience constituting undue hardship, and make any recommendations it considers appropriate; or

(b) if the Tribunal considers that no such order can be made, it shall make such recommendations as it considers appropriate.

DECISION WITHIN THIRTY DAYS

40. The Tribunal shall endeavour to make its finding and decision within thirty days after the conclusion of its hearing, or so soon thereafter as is reasonably practicable.

LIMITATION OF ORDER

41. No order under subsection 39(2) may contain a term
(a) requiring the removal of an individual from a position if that individual accepted employment in that position in good faith; or
(b) requiring the expulsion of an occupant from any premises or accommodation, if that occupant obtained such premises or accommodation in good faith.

COSTS

42. Where, upon dismissing a complaint, the Tribunal finds that,
(a) the complaint was trivial, frivolous, vexatious or made in bad faith, or
(b) in the particular circumstances undue hardship was caused to the person complained against,
the Tribunal may order the Commission to pay to the person complained against such costs as are fixed by the Tribunal.

OBTAINING AN INJUNCTION

43.(1) If the Commission provides for an order or recommendation pursuant to section 39 to be carried out within a set time, and the order or recommendation has not been complied with to the satisfaction of the Commission within that time, and the time for appeal has passed, the Commission may, with the written consent of the victim of discrimination, apply to the Supreme Court of the Northwest Territories to obtain an interim or permanent injunction or other appropriate relief with respect to the person in default.

Recourse of the Victim

(2) The victim of discrimination may exercise the recourse provided for in subsection (1), and in such case the Commission must allow the victim to consult those portions of his or her record which, in the opinion of the Commission, are not of a confidential nature.

APPEAL FROM DECISION OF TRIBUNAL

44.(1) Any party to a proceeding before a Human Rights Tribunal may appeal from a decision or order of the Tribunal to the Supreme Court of the Northwest Territories in accordance with the rules of court applicable in civil matters, subject to any additional procedural matters specified in this section.

Record to be Filed in Court

(2) Where notice of an appeal is served under this section, the Commission shall forthwith file in Court the record of the proceedings before the Tribunal including a transcript of the oral evidence taken before the Tribunal.

Further Evidence on Appeal

(3) If in its opinion it is essential in the interest of justice to receive additional evidence or testimony, the Court may do so.

Powers of Court

(4) An appeal under this section may be made on questions of law or mixed law and fact and the Court may affirm or reverse the decision or order of the Tribunal or direct the Tribunal to make any decision or order that the Tribunal is authorized to make under this Code and the Court may substitute its opinion for that of the Tribunal.

OFFENCES
Offence

45.(1) Every person is guilty of an offence who

(a) fails to comply with the terms of any settlement of a complaint approved and certified under subsection 36(2);
(b) obstructs a Tribunal in carrying out its functions under this Part; or
(c) contravenes paragraph 9(11)(f), section 12 or subsection 33(10).

Punishment

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction

(a) if the accused is an occupational organization, to a fine not exceeding fifty thousand dollars; or
(b) in any other case, to a fine not exceeding five thousand dollars.

Prosecution of Occupational Organization

(3) A prosecution for an offence under this section may be brought against an occupational organization and in the name of that organization, and for the purpose of such a prosecution such an organization shall be deemed to be a person, and any act or thing done or omitted by an officer or agent of such organization within the scope of that officer's or agent's authority to act on behalf of the organization shall be deemed to be an act or thing done or omitted by the organization.

Consent of Executive Member

(4) A prosecution for an offence under this Code may not be instituted except by or with the consent of the Executive Member.

COOPERATION WITH OTHER COMMISSIONS

46. Subject to the approval of the Executive Member, the Commission may enter into agreements with similar bodies in the provinces or with the Canadian Human Rights Commission providing for the performance by the Commission on behalf of those bodies or authorities of duties or functions specified in the agreements or for the performance by those bodies or authorities on behalf of the Commission of duties or functions so specified.

REPORTS OF THE COMMISSION

Annual Report

47.(1) The Commission shall, within four months after the 31st day of March in each year, transmit to the Executive Member a report on the activities of the Commission for that fiscal year including, subject to subsection (2), references to and comments on any matter that it considers appropriate and the Executive Member shall cause the report to be laid before the Legislative Assembly on any of the first fifteen days next thereafter that the Assembly is sitting.

(2) Each annual report shall include a general discussion of the handling of complaints during the year, as well as a more detailed report on the undertaking and conduct of public information programs for the promotion of human rights by the Commission and its staff.

Special Reports

(3) The Commission may, at any time, transmit to the Executive Member a special report referring to and commenting on any matter within the scope of its powers, duties and functions where, in its opinion, the matter is of such urgency or importance that a report thereon should not be deferred until the time provided for transmission of its next annual report under subsection (1), and the Executive Member shall cause each such special report to be laid before the Assembly within fifteen days after receipt thereof or, if the Assembly is not then sitting, on any of the first fifteen days next thereafter that the Assembly is sitting.

PART 6
SPECIAL PROGRAMS

AFFIRMATIVE ACTION

48.(1) On the application of any person or on its own initiative, the Northwest Territories Human Rights Commission may approve or order a special program, plan or arrangement designed to prevent, eliminate or reduce disadvantage suffered by or likely to be suffered by any group or class of individuals because of past or continuing discrimination.

(2) The Commission may at any time make general recommendations or issue guidelines concerning desirable objects for and the content of special programs, plans or arrangements.

(3) At any time before or after the approval or order mentioned in subsection (1) or the order of a program, plan or arrangement by a Tribunal, the Commission may

(a) make inquiries concerning a program, plan or arrangement, including the carrying out of investigation pursuant to section 33 and the regulations;
(b) on application or otherwise give advice and assistance with respect to the adoption or carrying out of a program, plan or arrangement;
(c) vary or impose conditions on a program, plan or arrangement; or
(d) withdraw approval of the program, plan or arrangement.

(4) Nothing done in accordance with a program, plan or arrangement approved or ordered pursuant to this section is in violation of the provisions of this Code while the relevant aspect of the program, plan or arrangement remains approved.

EXEMPTIONS

49.(1) Where any person or class of persons is entitled to an exemption under any provision of this Code or where the Commission considers it necessary and advisable, the Commission may, upon application, exempt that person or class of persons from any of the provisions of this Code, other than Parts 1 and 2.

(2) The exemption mentioned in subsection (1) is to be made by order in accordance with terms, conditions or criteria described in the regulations or in guidelines issued by the Commission.

(3) Notwithstanding that an exemption order has been made under subsection (1), the Commission may, on its own initiative or upon application from any person or class of persons, terminate the exemption order, but the person or class of persons in whose favour the exemption order was made shall receive thirty days' written notice that the exemption order may be terminated and shall be allowed to make written representation to the Commission.

ADVISORY OPINIONS

50.(1) Any person who contemplates publishing or using a form, advertisement, notice, announcement or message or engaging in any other conduct that might contravene this Code, may request the Commission to give an advisory opinion as to whether the form, advertisement, notice, announcement, message or conduct would contravene the Code, and the Commission shall, after making such enquiries and investigation as it deems necessary, give an advisory opinion in writing.

Revocation or Modification of Opinion

(2) Where the Commission gives an advisory opinion in accordance with subsection (1) it may revoke or modify the opinion at any time, provided that the Commission gives written notification of the revocation to the person to whom the advisory opinion was given.

Reliance on Opinion

(3) Notwithstanding any revocation or modification of an advisory opinion by the Commission, no act done in reliance on the advisory opinion prior to the receipt of notice as to its revocation, modification, or invalidation, shall constitute a breach of this Code, provided that the facts provided to the Commission by the person seeking the advisory opinion were true in all relevant respects.

Commencement

(4) This section comes into force one year after the coming into force of this Code.

REGULATIONS CONCERNING GOVERNMENT CONTRACTS

51. The Commissioner, upon the recommendation of the Executive Member, may make regulations respecting the terms and conditions to be included in or applicable to any contract, grant, contribution, loan, guarantee or licence given by the Government of the Northwest Territories or any of its agencies providing for

(a) the prohibition of discrimination; and

(b) the resolution of complaints of discrimination contrary to such terms and conditions.

PART 7
APPLICATION AND GENERAL PROVISIONS

BINDING ON GOVERNMENT

52. This Code is binding on the Government of the Northwest Territories and every agency of the Government of the Northwest Territories.

PRECEDENCE OF HUMAN RIGHTS ORDINANCE

53. Any law or subordinate legislation of the Northwest Territories or within or under its legislative jurisdiction is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Code, unless it is expressly stated in an Ordinance that a particular law operates notwithstanding this Code.

ENFORCEMENT OF ORDERS

54.(1) Any order made pursuant to this Code may, for the purpose of enforcement, be made an order of the Territorial Court and is enforceable in the same manner as an order of that Court.

(2) To make an order under this Code an order of the Territorial Court, the usual practice and procedure may be followed or, in lieu thereof, the Commission may file with the Clerk of the Court a copy of the order certified to be a true copy and thereupon that order becomes an order of the Court.

PRIORITIES OF COMPLAINTS

55. After the coming into force of this Code, the Commission may, with the approval of the Executive Member, by by-law, limit or restrict the filing of complaints in respect of any discrimination until such time as the Commission is able to process all complaints under this Code in an orderly manner, but in no case shall limitations apply beyond one year after this Code comes into force.

NO COMPLAINTS TO BE DEALT WITH IN CERTAIN CASES

56.(1) Notwithstanding any provision of this Code, no complaint may be dealt with

(a) that relates to any action that does not increase discrimination and that is taken by a person before one year has elapsed after this Code comes into force in accordance with the provisions of

(i) any superannuation or pension fund or plan, based on age, sex or family status, that is applicable to employees or former employees of the person on the commencement of this *Code*, or

(ii) any insurance plan applicable to employees or former employees of the person on the commencement of this *Code* that provides benefits in respect of life, death, accident, sickness, pregnancy, dental care, disability or unemployment insurance based on age, sex or family status; or

(b) that relates to any provision of any fund or plan described in paragraph (a) before one year has elapsed after this Code comes into force.

Further Limitation

(2) This Code does not apply to or in respect of any superannuation or pension fund or plan established by an Ordinance enacted before the coming into force of this section.

Review of Ordinances

(3) The Commission shall keep under review those Ordinances enacted before the coming into force of this section by which any superannuation or pension fund or plan is established and, where the Commission deems it to be appropriate, it may include in a report mentioned in section 47 reference to and comment on any provision of any such Act that in its opinion is inconsistent with or does not further the principles described in section 2.

IMMUNITY FROM LIABILITY

57.(1) No civil action shall be taken by reason or in consequence of the publication of a report of the Commission under this Code, or the publication in good faith of an extract from or summary of such a report.

(2) The Commission, its members, the Executive Director, any member of a Tribunal, and any person acting under the authority of the Commission, the Executive Director or a Tribunal, are immune from civil liability for any act or omission occurring in the course of carrying out their respective responsiblities under this Code, provided that the act or omission is in good faith.

TECHNICAL DEFECTS

58. No proceeding under this Code shall be invalid by reason of any defect in form or any technical irregularity.

REGULATIONS

59. The Commissioner, upon the recommendation of the Executive Member, may make regulations respecting any matter which in the judgment of the Human Rights Commission is necessary or desirable for the attainment of the ideals and purpose of this Code, and without restricting the generality of the foregoing, may make regulations

(a) authorizing the Commission to exercise such powers, duties and functions, in addition to those prescribed by this Code, as are necessary or desirable for carrying out the provisions or purposes of this Code; and

(b) concerning practice and procedure with respect to special programs, the handling of complaints, the enforcement of warrants or orders, or the promotion of human rights.

COMMENCEMENT

60.(1) This Code comes into force on a day to be fixed by order of the Commissioner.

(2) In the proclamation referred to in subsection (1), specific sections or Parts of this Code may be declared to come into force at a later specified date not later than one year after the day named in the proclamation.